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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/623,633	07/22/2003	Muh-Rong Wang	MR1917-129	5173

4586 7590 01/26/2006

ROSENBERG, KLEIN & LEE
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ELLICOTT CITY, MD 21043

EXAMINER

GORMAN, DARREN W

ART UNIT	PAPER NUMBER
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3752

DATE MAILED: 01/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of species Group II in the reply filed on January 6, 2006 is acknowledged.
2. Claims 2, 4 and 5 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on January 6, 2006.

Drawings

3. The drawings are objected to because in Figures 1, 4, 5 and 6 the drawings include text indicating that "air" enters into casing (1) through inlets (3). This is not consistent with the specification, which discloses that "noble gas" enters the casing through the gas inlets (3).

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an

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application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

4. The drawings are further objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: Reference number "41", as shown in Figures 2 and 2-1, and reference number "71" as shown in Figure 4, are not found in the specification.

Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Minor Claim Suggestions By Examiner

5. The following change(s) are recommended to improve clarity of the claims. The claims have been examined on the merits including the suggested changes below.

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- In claim 1, on line 5, --and-- should be inserted between “member,” and “ a plurality of gas inlets”.
- In claim 3, on line 2, -- of the casing-- should be inserted between “outlet” and “is in communication”.
- In claim 3, on line 3, --and-- should be inserted between “extension part,” and “ a second”.
- In claim 3, on line 3, --is-- should be inserted between “member” and “located”.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

7. Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by Fischer et al., USPN 6,575,382.

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Fischer shows an atomizing device (see Figure 3) comprising a casing (130) with an inlet tube (116) inserted in the casing and an outlet (150) defined through the casing, the inlet tube and the outlet sharing a common axis, a first impact member (120; see various embodiments shown in Figures 4A-4E) located at an outlet of the inlet tube, at least one of the various embodiments of the impact member being a polygonal member, and a plurality of gas inlets (134) connected to the casing.

It should be noted that the recitation, "A metal atomizing device" has not been given patentable weight because it has been held that a preamble is denied the effect of a limitation where the claim is drawn to a structure and the portion of the claim following the preamble is a self-contained description of the structure not depending for completeness upon the introductory clause. *Kropa v. Robie*, 88 USPQ 478 (CCPA 1951).

It should further be noted that the recitation, "so as to be adapted to provide noble gas into the casing" has not been given patentable weight because it has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchinson*, 69 USPQ 138.

Allowable Subject Matter

8. Claim 3 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US Patents to Coanda, Hanson, Jr., Haruch, and Schwab, are cited as of interest.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darren W. Gorman whose telephone number is 571-272-4901.

The examiner can normally be reached on M-F 7:30-5:00.

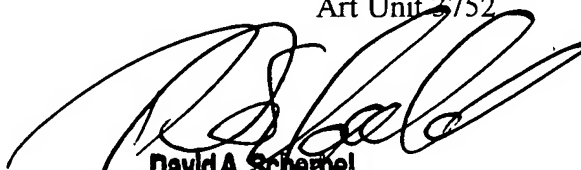
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Scherbel can be reached on 571-272-4919. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Darren W Gorman
Examiner
Art Unit 3752

DWG 1/17/06
DWG

January 17, 2006


David A. Scherbel
Supervisory Patent Examiner
Group 3700